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In the Supreme Court of the United States

OCTOBER TERM, 1962

[illegible] HARRIS and SADIE SCHWARTZ, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

[illegible]
Solicitor General,
[illegible]
Assistant Attorney General,
[illegible]
[illegible],
Department of Justice,
Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 915

JOSEPH HARRIS and SADIE SCHWARTZ, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The question in this case is whether the courts below erred in holding that a duly recorded federal tax lien was superior to subsequent local tax liens. The federal lien arose on November 20, 1947 (Pet. 7, 14) and notice thereof was filed on May 15, 1951, with the County Clerk of Nassau County, where the property in question is located (Pet. 14-15). The local tax liens, which arose more than ten years later, were for unpaid school taxes for the years 1958-1960 and for county taxes for the years 1959 and 1960 (Pet. 15). The local liens were purchased

by the petitioners from the county in 1959 and 1960 (Pet. 15), the petitioners receiving certificates of sale which could be converted into tax deeds at the expiration of the period of redemption. See *United States* v. *Mojac Construction Corp.*, 190 F. Supp. 622 (E.D. N.Y.). The government sued to foreclose its prior tax lien, naming the petitioners as parties, and the district court's decree ordering a sale of the property free and clear of all liens was affirmed by the court of appeals. Both lower courts rejected the petitioners' contentions (1) that notice of the federal tax lien was improperly filed and (2) that as purchasers of the state's tax liens they held an interest in the property acquired from the state which was independent of the taxpayer's title and therefore superior even to the prior federal tax lien.

Petitioners here raise only the second contention.[1] Relying upon the statement of the New York Court of Appeals in *Buffalo Savings Bank* v. *Victory*, 11 N.Y. 2d 31, 36, reversed, 371 U.S. 228, that the property interest of the taxpayer "is conditioned upon the payment of annually recurring governmental land taxes" (Pet. 11), they in effect urge, as the court below stated, that "the property * * * reverted to the County for nonpayment of taxes, wiping out all prior encumbrances at that instant" (Pet. 18). But this proposition is, at best, a rule of state law according priority to its local real estate tax liens over any state created liens; it cannot, as this

[1] As the court below pointed out (Pet. 17), *United States* v. *Union Central Life Ins. Co.*, 368 U.S. 291, is dispositive of the first contention.

Court held in *Michigan* v. *United States*, 317 U.S. 338, 340-341, defeat or impair the supremacy of the federal tax lien under federal law. In short, it is now well-settled that later arising local tax liens, not perfected until assessment, are inferior to a prior federal tax lien under the principle that the first in time is the first in right. *United States* v. *New Britain*, 347 U.S. 81, reaffirmed in *United States* v. *Buffalo Savings Bank*, 371 U.S. 228.[2]

Petitioners' contention that they are holders of something other than local tax liens is thus without substance, and their attempted distinction of the *Buffalo Savings Bank* case is without merit. That decision, holding that foreclosure of a senior mortgage cannot alter the priority of a federal tax lien over later arising local real estate tax liens, is controlling here.

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[2] While the *Buffalo* opinion does not specifically discuss the proposition stated by the New York Court of Appeals and relied upon here by petitioners, the point was fully briefed and considered. (See, Main Brief for the United States, pp. 13-18, Reply Brief for the United States, pp. 8-10.)

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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